

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BONVIVINO CAPITAL LLC,

Plaintiff,

v.

MORGAN CLENDENEN; COLD
HEAVEN CELLARS, LLC; and DOES 1–
50,

Defendants.

Case No. 2:12-cv-08185-ODW(FFMx)

**ORDER DENYING EX PARTE
APPLICATION [66]**

Defendants now seek ex parte relief from the Court to exclude the testimony of Bonvivino Capital, LLC's expert witness John A. Hinman. (ECF No. 66.) They argue that Bonvivino designated Hinman as an expert witness on July 3, 2013—three months after the March 18, 2013 expert-disclosure deadline.

Though Defendants' assertions may be true, their window for filing motions has passed; the last day for hearing motions was June 24, 2013. (ECF No. 12.) The relief they seek should be addressed in a motion in limine.

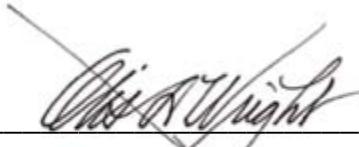
Further, a party seeking ex parte relief must establish that it "is without fault in creating the crisis that requires ex parte relief, or that the crisis occurred as a result of excusable neglect." *Mission Power Eng'g Co. v. Cont'l Casualty Co.*, 883 F. Supp. 488, 492 (C.D. Cal. 1995). Upon review of the record, it appears that Defendants delayed production of discovery, albeit in protest to overbroad discovery requests.

1 And though Bonvivino cannot be said to be without fault in causing that delay,
2 Defendants cannot establish that they are “without fault in creating the crisis.” *Id.*
3 at 492.

4 Therefore, Defendants’ Ex Parte Application is **DENIED**. Defendants may
5 raise this issue in a motion in limine, appropriately filed in accordance with the
6 Court’s Scheduling and Case Management Order. (ECF No. 12.)

7 **IT IS SO ORDERED.**

8
9 July 9, 2013

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12 **OTIS D. WRIGHT, II**
13 **UNITED STATES DISTRICT JUDGE**

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